

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>AMBRE JONES</b>	)	
Claimant	)	
VS.	)	
	)	
<b>SAUER DANFOSS</b>	)	Docket Nos. 258,885;
Respondent	)	258,886; & 258,887
AND	)	
	)	
<b>FIREMANS FUND INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the preliminary hearing Order for Compensation dated November 9, 2000, entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Claimant alleges she initially injured her right shoulder in February 2000 while working for respondent and thereafter aggravated her injury each and every working day through August 23, 2000 when she was terminated. Judge Avery granted claimant's request for preliminary benefits finding claimant proved she suffered personal injury by accident that arose out of and in the course of her employment and that notice was timely. Judge Avery further found that claimant "suffered a repetitive trauma type of injury during which her initial injury worsen[ed] with each work day." The issues on this appeal are:

- (1) Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?<sup>1</sup>
- (2) If so, did claimant provide timely notice of accident?<sup>2</sup>

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<sup>1</sup> K.S.A. 44-501.

<sup>2</sup> K.S.A. 44-520.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds the Order for Compensation should be affirmed.

The transcript of the November 6, 2000, preliminary hearing bears only the single docket number 258,887. Judge Avery's November 9, 2000, Order for Compensation, however, bears three docket numbers - 258,885; 258,886; and 258,887. The purpose for the multiple claim numbers is somewhat hazy. All three files contain a cover letter from claimant's counsel to the Division of Workers Compensation dated September 7, 2000, and stamped received September 8, 2000, which begins as follows: "Enclosed please find three (3) separate Claimant's Application for Hearing, Form E-1." However, the letter references a single "Date of Injury: September 29, 1999". But that date is crossed out and hand written is the following notation: "4-20-2000; 6-5-2000; & 8-10-2000 per ph call [with] cl atty's off. ees - 9-13-2000".

The September 7, 2000 letter from claimant's counsel was followed by a second letter dated October 4, 2000 and stamped received October 5, 2000 which again begins, "Enclosed please find three (3) separate Applications for Preliminary Hearing, Form E-3" but references "Dates of Injuries: 4/20/00, 6/5/00 & 8/10/00." That letter is likewise filed in the administrative file of all three docketed claims. A single form E-1 Application for Hearing likewise stamped received September 8, 2000, describes a single accident on April 20, 2000 for "electrical shock to right arm and shoulder as a result of touching an underground 220 volt electrical line." The Notice of Hearing/Application for Preliminary Hearing issued by the Division on September 13, 2000 in Docket No. 258,885 shows a date of accident of April 20, 2000. The form E-3 Application for Preliminary Hearing filed in Docket No. 258,885 provides: "This is an application for preliminary hearing with regard to accident or occupational disease on: (date) April 20, 2000."

In Docket No. 258,886 there is a form E-1 stamped received September 8, 2000, for a date of accident on June 5, 2000 alleging an injury consisting of a ganglion cyst caused by "working on the production line, lifting and putting tandem transmissions together." The form E-3 Application for Preliminary Hearing in Docket No. 258,886 likewise alleges an accident on June 5, 2000. The September 13, 2000 Notice of Hearing/Application for Preliminary Hearing in Docket No. 258,886 shows a date of accident of June 5, 2000.

The form E-1 Application for Hearing in Docket No. 258,887 lists a date of accident of August 10, 2000. The injury claimed is a "torn rotator cuff" caused by "working on the assembly line". The September 13, 2000 Notice of Hearing/Application for Preliminary

Hearing in Docket No. 258,887 shows a date of accident of August 10, 2000. There is also a letter from claimant's counsel dated October 4, 2000 stamped received October 5, 2000 by the Kansas Division of Workers Compensation which again begins "Enclosed please find three (3) separate Applications for Preliminary Hearing, Form E-3" referencing "Dates of Injuries: 4/20/00, 6/5/00 & 8/10/00". The form E-3 Application for Preliminary Hearing in Docket No. 258,887 alleges an accident date of August 10, 2000. There is also a Docket No. 261,022 involving the same parties which deals with a July 20, 2000 date of accident claiming injury from "sliver of metal in right thumb which became infected" while "working with metal parts for a transmission".

Accordingly, claimant is alleging a specific injury to her right arm and shoulder occurred on April 20, 2000 as a result of touching an ungrounded 220 volt electrical line on April 20, 2000 in Docket No. 258,885. In Docket No. 258,886 claimant is alleging a ganglion cyst injury or condition was caused by a June 5, 2000 accident or a series of accidents beginning or ending on June 5, 2000 from working on the production line. And, in Docket No. 258,887 claimant is alleging a torn rotator cuff injury from working on the assembly line either from a specific accident date of August 10, 2000 or from a series of accidents which either began or ended on August 10, 2000.

The Notice of Hearing for the November 6, 2000 preliminary hearing bore all three docket numbers but the transcript begins with Judge Avery announcing "this is in reference to Docket No. 258,887." No mention is made of the other docketed claims and, as stated, the transcript bears only Docket No. 258,887 whereas the order bears the three docket numbers - 258,885; 258,886; & 258,887. The order does not specify whether the compensation is being paid under any one or more of the docket numbers nor does it specify a date of accident. However, because the ALJ found a "repetitive trauma type of injury" which caused claimant's initial injury to "worsen with each work day", it will be assumed that the preliminary hearing Order for Compensation was intended to be inclusive of all three docketed claims.

Claimant started working for respondent on August 23, 1999. She described her job duties assembling transmissions on a line as follows:

I was doing a lot of assembly on the line at that point. I would start out with an empty housing, as they would say, for a transmission. I put it up, pick it up, press a bearing into it, put it on a pallet that they had on a roller type of line. . . . Put in the valve plate, put in the cylinder block, put in the shaft. . . . Then we would flip the units over. They're about 60 pounds, I believe, 60 to 70 pounds. I'm not sure. They're quite heavy. After that, if we were building

tandem transmissions, which we did quite frequently, we would build another one that would be what they would call a rear pump, lift it and stack it on top of the other one. If it's just a pump, we would simply just flip them over by hand. We didn't have equipment to do it at that point. And then we would just keep doing that. Flip them over if they were a pump, stack them if they were a tandem transmission.<sup>3</sup>

Claimant stated that she would be standing the entire time she performed her job throughout the 10-hour work day. Respondent subsequently obtained mechanical assistance devices to perform some of the lifting functions but claimant said she was never trained to use them. In February 2000 her job duties partially changed in that she also performed testing

. . . which required hooking up – they're not as big as fire hoses, but they are quite hard to do, someone my size. As you pull this – I don't know exactly how you would say it, but it's like a clasp back, and you have to constantly jab these hoses on. And there was one particular hose that I was constantly having to put everything I had into it weight-wise to just get it on. It's the biggest one. There's only one of those, the big ones. But it would take a minute to build, let's say, down the line, maybe a minute or two to test. So I was constantly either lifting and stacking, or if I was at the test stand, continuously jabbing on hoses, testing the transmissions themselves, pulling off the hoses, and then setting them down. I know you're probably going to wonder. After – on the assembly line, after they were done doing the stacking part, finished assembling that, we would go down and put fittings on, constant twisting of your hands. We didn't get anything until after January to actually screw those on for us. It wasn't ergonomically okay. I don't know how to put it. We were putting fittings on so they could go to the test stand so at that point I could jab those hoses on, run 2,000 PSI of oil through there, usually, set it to neutral, pull it off, and send it on.

Q. But to get the hoses on, you had to jam them in to get them on?

A. Yes, sir.

Q. Were you able to do this work?

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<sup>3</sup> Transcript at 5-6.

A. Yes, I was able to do it. It was tough. In fact, I had a few women who had been up there a couple times say, "How do you do it," because it's pretty tough work getting those hoses on.<sup>4</sup>

Claimant describes an onset of shoulder symptoms which got progressively worse as she continued working.

A. At the end of February I noticed, like, I just pulled a muscle or something. I didn't think much of it at the time, you know, had pulled muscles before, taken a month or so to go away. Didn't go away. By April I was really just starting – I got to the point I couldn't even sleep on the shoulder, but I didn't think really much about it until finally it was bothering me so bad, I went to the doctor, and I didn't know –

. . .

I went ahead and continued working. And in July, I saw the company doctor, and they told me it was bursitis. So had I not gone and seen my occupational – or my orthopedic surgeon, I would never have known that I had a torn rotator cuff.<sup>5</sup>

Claimant gave a written accident report concerning her shoulder injury to her employer on or about August 14, 2000. Claimant did not give a date of accident, but the human resources director Kathleen Gillihan wrote August 10 on the workers compensation claim form. Mr. Keith Folkmann, the director of plant operations, testified that claimant mentioned her shoulder problem to him on July 21, 2000, but he first learned that claimant was alleging it was work related from Ms. Gillihan on August 8, 2000. Claimant continued working until August 23 when she was terminated. Since claimant's last day of work was August 23, 2000, that will be the date of accident for purposes of notice.<sup>6</sup>

An accidental injury is compensable under the Workers Compensation Act where the accident arose out of and in the course of employment.<sup>7</sup> The question of whether there has

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<sup>4</sup> Transcript at 7-8.

<sup>5</sup> Transcript at 9-10.

<sup>6</sup> Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).

<sup>7</sup> K.S.A. 44-501(a); Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 738 P.2d 445 (1987).

been an accidental injury arising out of and in the course of employment is a question of fact.<sup>8</sup>

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.<sup>9</sup> "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>10</sup> The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.<sup>11</sup>

Claimant testified that while working for respondent building and testing transmissions, she first injured her right shoulder on or about February 22, 2000. She also alleges an each and every working day aggravation thereafter. Respondent argues that claimant's failure to present a medical expert's opinion that relates her shoulder condition to her work is fatal to her claim. But medical evidence is not essential to the establishment of the existence, nature, and extent of a worker's injury.<sup>12</sup> The Board finds claimant's testimony is sufficient to prove causation.

There is a dispute about when claimant reported her injury. Respondent challenges claimant's credibility because of inconsistencies and conflicts with the testimony of the respondent's witness, Keith Folkmann. Furthermore, the testimony is contradictory as to when the alleged injury occurred, whether claimant denied the injury was work related, and when claimant first gave notice that she was claiming her injury was work related. Credibility, therefore, is important to a resolution of this issue. Judge Avery observed claimant testify and apparently found claimant's testimony was persuasive. Giving some deference to this conclusion, and after considering the testimony of Mr. Folkmann and the medical records in evidence, the Board agrees.

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<sup>8</sup> Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

<sup>9</sup> K.S.A. 44-501(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

<sup>10</sup> K.S.A. 44-508(g). *See also* In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>11</sup> K.S.A. 44-501(g).

<sup>12</sup> *See* McKinney v. General Motors Corp., 22 Kan. App. 2d 768, 772, 921 P.2d 257 (1996); Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The purposes of the notice requirement are primarily to give the employer an opportunity to investigate the facts while still fresh and to alert the employer to the possibility of an injury, so the employer can provide prompt medical treatment, if necessary, and/or make accommodations to prevent further injury.<sup>13</sup> Even if claimant's testimony is disregarded these purposes were all satisfied in this case. Respondent admits it had knowledge of the claimant's symptoms no later than July 21, 2000 and knew that she was claiming her condition was work related by August 8, 2000. Therefore, claimant's testimony is not necessary to establish timely notice for a series of accidents that ended on August 23, 2000.

The Board finds and concludes that claimant has proven that she more probably than not sustained personal injury by a series of accidents arising out of and in the course of her employment with respondent beginning in February 2000 and a series of aggravations each and every working day thereafter. Because it is undisputed that claimant gave notice before she was terminated, claimant has likewise proven that timely notice of accident was given.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>14</sup>

**WHEREFORE**, the Workers Compensation Board affirms the Order for Compensation dated November 9, 2000, entered by Administrative Law Judge Brad E. Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

c: Richard C. Wallace, Shawnee, KS  
Joseph C. McMillan, Kansas City, MO  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

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<sup>13</sup> See Injured Workers of Kansas v. Franklin, 262 Kan. 840, 942 P.2d 591 (1997); see also Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

<sup>14</sup> K.S.A. 44-534a(a)(2).